



Federal Communications Commission  
Washington, D.C. 20554

**DA 07-3142**  
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Re: Applications for Renewal of License  
Station WHAS-TV, Louisville, KY (File No.  
BRCT-20050401BGR; Facility ID No. 32327)  
Station WKPC-TV, Louisville, KY (File No.  
BRET-20050331ATP; Facility ID No. 21432)

Dear Ms. Strange:

On January 3, 2005, 22 citizens of Louisville, Kentucky, identified as The Television Licensure Working Group, filed a letter and signed petition, which we consider here as an informal objection, requesting a hearing to explore alleged violations of Commission rules by five Louisville-area television stations, including the above-captioned station WHAS-TV, Louisville, Kentucky, and WKPC-TV, Louisville, Kentucky. Belo of Kentucky, Inc. ("Belo") and the Kentucky Authority for Educational Television ("KET"), licensees of stations WHAS-TV and WKPC-TV, respectively, filed oppositions on August 1, 2005, and August 22, 2005. On October 25, 2005, the staff issued a letter denying the informal objection with respect to the license renewal applications of station WAVE-TV, Louisville, Kentucky, and WLKY-TV, Louisville, Kentucky.<sup>1</sup> In this letter, we deny the informal objection filed against the station WHAS-TV and station WKPC-TV license renewal applications.

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<sup>1</sup> Letter from Barbara A. Kreisman, Chief, Video Division, to Victoria Strange, dated October 25, 2005.

The petitioners request that the Commission grant the license renewals of the named stations “contingent upon giving the residents of [the] community the opportunity to discuss with [the Commission] and the management of those stations specific ways to improve their public access and be far more responsive to their audiences.”<sup>2</sup> The petitioners argue that station WHAS-TV management stated that it was station policy that no copies of information contained in the public files could leave the main studio. The petitioners further state that one of its members was told that a KET regional representative must be present in order for a member of the public to view the files of all KET affiliate stations. The petitioners argue, more generally, that the format for issues and programming files “varies dramatically from station to station;” that none of the named Louisville-area stations maintains a “publicly accessible archive of its local news broadcasts;” and that all the Louisville-area stations “are seriously lacking in their coverage of crucial local issues.”<sup>3</sup> With respect to this last allegation, the petitioners argue more specifically that “[a]s a result of KET’s decision to merge its Louisville affiliate (WKPC) with its Lexington affiliate (WKMJ), there is an almost complete absence of any local, Louisville-based programming.”<sup>4</sup>

Belo responds that “[w]hile it is WHAS-TV’s policy not to permit documents contained in the public inspection file to leave the premises, it is not the station’s policy to prohibit visitors from asking for and receiving copies.”<sup>5</sup> Belo states that while Ms. Strange was informed that, while documents could not leave the premises, she was also told that she could view the documents on site and that the station would make copies of selected items. KET, in its separate opposition, maintains that as a statewide noncommercial educational broadcaster, it is entitled to maintain its main studio in a central office in Lexington, Kentucky. KET denies that it requires regional representatives to be present at the inspection of its stations’ public files, but rather that Ms. Smith had requested documents that were not part of the public inspection file and were in the possession of KET’s Designated Chief Operators. KET states that it has provided ample issue-responsive programming as documented in an attachment to the opposition, and that “the general complaint of lack of coverage of local issues is vague, completely unsubstantiated, and without merit.”<sup>6</sup>

Section 309(k)(1) of the Act states that the Commission shall grant a license renewal application if it finds, with respect to that station, that (a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations by the licensee of the Communications Act or Commission rules and regulations; and (c) there have been no other violations by the licensee of the Act or Commission rules or regulations which, taken together, would constitute a pattern of abuse.<sup>7</sup> With respect to whether the station has served the public interest, the petition must first contain specific allegations of fact sufficient to show that such a

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<sup>2</sup> *June 29, 2005, Informal Objection*, at 3.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Belo Opposition*, at 1 (emphasis in original).

<sup>6</sup> *KET Opposition*, at 8.

<sup>7</sup> 47 U.S.C. §309(k)(1).

grant would be prima facie inconsistent with the public interest.<sup>8</sup> If so, the Commission will designate the application for hearing if the allegations, together with any opposing evidence before the Commission, raise a substantial and material question of fact as to whether grant would serve the public interest, or if the Commission is otherwise unable to conclude that granting the application would serve the public interest.<sup>9</sup>

Section 73.3526(c)(1) requires that the contents of a station's public inspection file be made available for copying upon request made in person.<sup>10</sup> The petitioners have provided no support for its contention that station WHAS-TV prohibited members of the public from copying the contents of its public inspection file, and Belo specifically denies this allegation. We, therefore, cannot find that the petitioners raised a substantial and material question of fact as to whether Belo violated section 73.3526(c)(1) of the Commission's rules. Section 73.3526(b) of the Commission's rules, as clarified by the Commission in 1999, requires that licensees maintain a public inspection file at the main studio, wherever located.<sup>11</sup> KET is correct that the Commission has generally permitted statewide noncommercial broadcasters to commonly locate their stations' main studios. It appears that the petitioners' allegations involving the station WHAS-TV and station WKPC-TV public inspection files may have stemmed from a misunderstanding between the petitioners and station management in this case. We encourage all licensees, therefore, to clearly communicate their obligations under the public file rule to members of the public.

With respect to the programming allegations, the FCC is prohibited by Section 326 of the Act from censoring programs or from interfering with freedom of expression in broadcasting. The choice of what is or is not to be covered in the presentation of broadcast news is a matter committed to the licensee's good faith discretion. Although every licensee has an obligation to present programming which is responsive to the problems, needs and interests of its service area, it is the responsibility of, and within the discretion of, each individual licensee to select the problems, needs and interests to be covered, as well as the particular programs to address those interests. The issues selected by a licensee to be addressed may be determined by the interests and nature of its audience and the availability of other program services. Just as we concluded with respect to stations WAVE(TV), Louisville, Kentucky, and WLKY-TV, Louisville, Kentucky, we have no information before us to indicate that stations WHAS-TV and WKPC-TV have violated our Rules or policies or have not acted with good faith judgment in their news programming. Therefore, absent a showing that there has been an abuse of discretion or a violation of our Rules, the Commission will not substitute its judgment for that of the licensee.

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<sup>8</sup> 47 U.S.C. §309(d)(1); *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) ("Astroline").

<sup>9</sup> *Astroline*, 857 F.2d at 1561; 47 U.S.C. §309(e).

<sup>10</sup> 47 C.F.R. § 73.3526(c)(1).

<sup>11</sup> 47 C.F.R. § 73.3526(b). *Review of the Commission's Rules Regarding the Main Studio and the Local Public Inspection Files of Broadcast Television and Radio Stations*, 14 FCC Rcd 11113 (1999).

The Commission, however, currently has pending a rulemaking seeking to standardize and enhance television broadcasters' public interest disclosure requirements.<sup>12</sup> In initiating this rulemaking, the Commission has sought, in part, to promote discussions between the licensee and its community about how best to meet the local public interest obligations of the community a broadcaster serves. Broadcast television licensees are not now required to maintain a publicly accessible archive of local broadcasts, as requested by the petitioners. The Commission is, however, considering in another pending rulemaking a proposal to require broadcasters to retain for some limited time period recordings of all their programming.<sup>13</sup> In the meantime, we urge all viewers and listeners, including the petitioners, to raise their programming concerns directly with their local broadcaster.

Accordingly, the informal objection filed against the station WHAS-TV and WKPC-TV license renewal applications **IS DENIED**.

Sincerely,

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>12</sup> *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Notice of Proposed Rulemaking, 15 FCC Rcd 19816 (2000).

<sup>13</sup> *In the Matter of Retention by Broadcasters of Program Recordings*, Notice of Proposed Rulemaking, 19 FCC Rcd 12626 (2004).